

Message Text

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ACTION EB-08

INFO OCT-01 ARA-10 ISO-00 CAB-02 CIAE-00 COME-00
DODE-00 DOTE-00 INR-10 NSAE-00 FAA-00 L-03 SS-15
NSC-05 SPTA-02 /056 W
-----019482 212124Z /66/14

R 202127Z JUL 78
FM AMEMBASSY PANAMA
TO SECSTATE WASHDC 8061
INFO PANCANAL
USSOUTHCOM
FAA BALBOA ARTCC

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C O R R E C T E D C O P Y (CCY FOR REF C) REFERENCE IS CORRECT

E.O. 11652: N/A
TAGS: EAIR, PN
SUBJECT: DRAFT FAA AGREEMENT

REF: A. PANAMA 05167 B. STATE A-2438

THE EMBASSY HAS RECEIVED THE FOLLOWING MESSAGE FROM THE
SOUTHERN COMMAND. THESE COMMENTS CONSTITUTE SOUTHCOM'S
CONCERNS AND VIEWS ON THE DRAFT IN REF B.

BEGIN QUOTE:

1. REFERENCE:

A. DRAFT AGREEMENT AS PROPOSED BY FAA UNDER COVER OF
FAA LETTER DATED 9 MARCH 1978.
B. SCJ3 MESSAGE 062019Z APR 78, SUBJECT, AGREEMENT
BETWEEN US GOVERNMENT AND REPUBLIC OF PANAMA CONCERNING
AIR TRAFFIC CONTROL AND RELATED SERVICES.
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C. DRAFT AGREEMENT AS PROPOSED BY FAA UNDER COVER OF
EMBASSY LETTER DATED 21 JUNE 1978.

2. REFERENCE A AND C DRAFT AGREEMENTS ARE ESSENTIALLY THE
SAME, WITH THE EXCEPTION OF ARTICLE IV F. THE BASIC
CHANGES NOTED WERE REFORMATTING THE TEXT.

3. THE COMMENTS PROVIDED TO JCS/J3/J5 IN REFERENCE B ARE STILL VALID FOR REFERENCE C. THESE COMMENTS HAVE BEEN REWRITTEN TO MATCH THE TEXT OF REFERENCE C WITH AN ADDED COMMENT ON ARTICLE IV F AS FOLLOWS:

A. THE TIME PHASING SPECIFIED IN ARTICLE IV, PARA A.1, 2 AND 3 IS ACCEPTABLE TO US MILITARY FORCES. HOWEVER, ANY CURTAILMENT OR COMPRESSION OF THIS SCHEDULE WOULD IMPACT ADVERSELY ON THE US MILITARY ABILITY TO ASSUME AIR TRAFFIC CONTROL OF ITS OWN ASSETS. THIS WOULD BE ESPECIALLY SIGNIFICANT IF THE PERICO ISLAND RADAR WOULD BE TURNED OVER TO PANAMANIAN CONTROL PRIOR TO 1980-1981, OR BEFORE THE GNP XX SHORT RANGE RADAR AT HOWARD AFB COULD BECOME OPERATIONAL.

B. BASED UPON AVAILABLE INFORMATION IT APPEARS THAT PANAMA COULD EXPERIENCE SHORTFALLS IN ABSORBING THE TRAINING AND FUNDING REQUIREMENTS SET FORTH IN THIS AGREEMENT. IF THAT SHOULD BE THE CASE, THEN FAA SHOULD BE OBLIGATED TO MAKE UP THE SHORTFALLS IN ORDER THAT NO EROSION OF SERVICES TO THE US MILITARY WOULD OCCUR.

4. FYI. THE FAA BALBOA AREA MANAGER ADVISED USSOUTHCOM IN REGARD TO ARTICLE IV PARA A.1, THAT ALTHOUGH TRAINING OF PANAMANIAN TO OPERATE THE IFSS COULD BE ACCOMPLISHED WITHIN ONE YEAR, THE TRAINING REQUIRED TO TURN OVER ALL LIMITED OFFICIAL USE

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MAINTENANCE ASSOCIATED WITH THE IFSS WOULD REQUIRE APPROXIMATELY FIVE YEARS DUE TO THE COMPLEXITY AND AMOUNT OF EQUIPMENT INVOLVED.

5. FROM AN ADMINISTRATIVE AND LEGAL VIEWPOINT, USSOUTHCOM BELIEVES THAT THE SUBJECT AGREEMENT SHOULD BE REFINED IN STYLE AND TO SUBSTANCE. SOME EXAMPLES FOLLOW:

A. THE DEFINITIONS OF HOUSING AND OPERATIONAL AREAS IN ARTICLE VI SHOULD BE AS DEFINED BY A SURVEY WHICH IS TO BE ACCOMPLISHED AT A LATER DATE. THIS WOULD BE IN CONSONANCE WITH EXISTING TREATY DOCUMENTS.

B. ELIGIBILITY OF FAA PERSONNEL AND DEPENDENTS TO USE MEDICAL, EDUCATIONAL, POSTAL, COMMISSARY, RECREATIONAL, EXCHANGE FACILITIES TO BE OPERATED BY THE US FORCES IN PANAMA APPARENTLY HINGES ENTIRELY ON THE WORD "SERVICES" IN ARTICLE VII AS PRESENTLY WRITTEN. THIS MAY BE TOO FLIMSY; SPECIFIC REFERENCE TO ARTICLES IX, X AND XI OF THE AGREEMENT IN IMPLEMENTATION OF ARTICLE IV WOULD ELIMINATE ANY QUESTIONS OF INTENT.

C. ARTICLE VI, PARA A.5 MENTIONED ONLY POLICE PROTEC-

TION SERVICES TO BE PROVIDED BY PANAMA FOR FAA OPERATIONAL AND HOUSING AREA. SINCE FAA WILL BE SEEKING ADDITIONAL MUNICIPAL SERVICES SUCH AS FIRE PROTECTION, STREET MAINTENANCE, STREET LIGHTING, STREET CLEANING, TRAFFIC MANAGEMENT AND GARBAGE COLLECTION; IT IS SUGGESTED THAT THEY SEEK TO OBTAIN THESE SERVICES UNDER THE TEN MILLION DOLLAR FEE PAID BY THE PANAMA CANAL COMMISSION.

D. ARTICLE VI, PARA A.3 APPEARS TO ESTABLISH A PRE-CONDITION OF PANAMANIAN AGREEMENT TO ANY DISPOSAL BY FAA OF ITS EQUIPMENT TO OTHER US AGENCIES IN PANAMA.

E. ARTICLE I OF THE AGREEMENT OMITS COMMUNICATIONS

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FROM THE LISTING OF THAT TO BE PROVIDED BY FAA, BUT COMMUNICATIONS ARE LISTED IN ARTICLE IV A.

F. ARTICLE VII A ENVISAGES THE USE OF US FORCES AND PAN CANAL COMMISSION SERVICES AND INSTALLATIONS BY FAA; BUT NOT VICE VERSA. THIS OMISSION SHOULD BE CORRECTED BY STATING THAT US FORCES PROVIDE SERVICES TO FAA AND THEREFORE MAY USE FAA FACILITIES AND SERVICES.

G. ARTICLE IV F IS BELIEVED TO REFER TO TRAINING. THE GENERAL PHRASE "ANCILLARY AERONAUTICAL SERVICES" IS CONSIDERED TO BE TOO BROAD, AND SHOULD BE REPLACED BY A MORE SPECIFIC TERM (I.E. "TRAINING").

6. USSOUTHCOM DOES NOT CONCUR WITH SO MUCH OF ARTICLE XI C AS SUGGESTS A ROLE FOR US FORCES POLICE IN ENFORCING ORDER AND DISCIPLINE WITH RESPECT TO FAA EMPLOYEES AND DEPENDENTS, AND WITHIN FAA AREAS. THIS PROVISION, WHICH MAY IN ANY CASE BE LEGALLY UNENFORCEABLE UNDER US LAW, APPEARS INCONSISTENT WITH THE DIPLOMATIC OR QUASI-DIPLOMATIC STATUS TO BE AFFORDED FAA PERSONNEL UNDER LIMITED OFFICIAL USE

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ARTICLE X A.

7. AS A FINAL GENERAL COMMENT, WE SUGGEST THE DESIRABILITY OF "EXCEPT AS THE PARTIES MAY OTHERWISE AGREE" CLAUSES IN ALL PORTIONS OF THE AGREEMENT DEALING WITH TIME LIMITS BY WHICH ACTIONS ARE TO BE ACCOMPLISHED. WE POINT PARTICULARLY TO THE 30- AND 90-DAY PERIODS NOTED IN ARTICLE IV B AND C, WHICH WOULD COINCIDE WITH THE POSSIBLE PERIOD OF MAXIMUM IMPLEMENTING ACTIVITY BY BOTH GOVERNMENTS OF ALL OTHER TREATY AND AGREEMENT PROVISIONS. THE AGREEMENT SHOULD ALLOW FOR REASONABLE FLEXIBILITY NECESSARY TO ITS PRACTICAL IMPLEMENTATION. END QUOTE. JORDEN

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